REMARKS

Summary

Claims 1, 3, 4, 6, 7, 9-11, 13, 14, 16 and 18-38 are pending in this application. Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended independent claims 1, 4, 6, 10, 13, 16, 18, 29, 32 and 38 in order to facilitate prosecution on the merits. Support for the above amendments can be found in the specification at least at paragraph [0031]. As such, no new matter has been added. Favorable reconsideration and allowance of the pending claims are requested.

Examiner Interview

Applicants would like to thank Examiner Rutkowski for conducting a telephone interview with Applicants' representative on May 7, 2010. During the interview, Examiner Rutkowski and Applicants' representative discussed the independent claims, the applied reference(s), and the grounds of rejection. The substance of the interview is reflected by the foregoing amendments and the following remarks.

Claim Rejections - 35 U.S.C. § 103

Claims 1, 3, 4, 6, 7, 9-11, 18, 19, 21-24, 25, 27, 29, 30, 31 and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,631,141 to Kumar et al. (hereinafter "Kumar") in view of United States Patent No. 5,959,968 to Chin et al. (hereinafter "Chin"), United States Publication No. 2005/0265358 A1 to Mishra et al. (hereinafter "Mishra") and United States Publication No. 2004/0068686 A1 to Palm (hereinafter "Palm"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the rejection.

Claims 13, 14, 16 and 32-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,631,141 to Kumar et al. (hereinafter "Kumar") in view of United States Patent No. 5,959,968 to Chin et al. (hereinafter "Chin"), United States Publication No. 2004/0068686 A1 to Palm (hereinafter "Palm"), United States Publication No. 2005/0265358 A1 to Mishra et al. (hereinafter "Mishra") and United States Patent No. 7,308,612 to Bishara (hereinafter "Bishara"). Applicant

respectfully traverses the rejection, and requests reconsideration and withdrawal of the rejection.

Claims 20, 26 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,631,141 to Kumar et al. (hereinafter "Kumar") in view of United States Patent No. 5,959,968 to Chin et al. (hereinafter "Chin"), United States Publication No. 2005/0265358 A1 to Mishra et al. (hereinafter "Mishra") and United States Publication No. 2004/0068686 A1 to Palm (hereinafter "Palm") as applied to claim 18, and further in view of United States Patent No. 7,308,612 to Bishara (hereinafter "Bishara"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the rejection.

According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

Applicant submits that the cited references, taken alone or in combination, fail to teach each and every element recited in claims 1, 3, 4, 6, 7, 9-11, 18, 19, 21-24, 27, 29, 30, 31 and 38 and thus they define over the cited references. For example, with respect to claim 1, the cited references fail to teach at least the following language:

> sending a first message including an aggregation discovery code from a first node to a second node, the second node including a remotely manipulated remote discovery register, wherein the first message comprises a capabilities list+request (CLR) message; and
> receiving a second message at the first node, the second message including the contents of the second node's remote discovery register, the contents of the remote discovery register indicating whether a PHY of the second node has been allocated for aggregation, wherein the second message comprises a CLR message.

According to the Office Action, the above-recited language is disclosed by Mishra. This assertion is respectfully traversed.

Applicant respectfully submits that claim 1 defines over Mishra because Mishra fails to disclose, teach or suggest at least a remotely manipulated remote discovery register. As provided for in the Specification, the remotely manipulated remote discovery register provides a significant technical advantage because the aggregation procedure can be performed entirely by operations on this register, limiting the complexity required for the device.

As stated in the Office Action, this language is disclosed by Mishra at paragraphs [0087]-[0088]. Mishra teaches a master slave switch. *See* Abstract. Mishra further teaches that the master can read/write to a slave's register remotely. *See* [0087]-[0088].

Claim 1 teaches sending a first message including an aggregation discovery code from a first node to a second node, the second node including a remotely manipulated remote discovery register, wherein the first message comprises a capabilities list+request (CLR) message. While Mishra teaches a remote register, Mishra does not teach a first message including an aggregation discover code from a first node to the second node where the second node includes a remotely manipulated remote discovery register. Mishra also does not teach the second message including the contents of the second node's remote discovery register where the contents of the remote discovery register indicate whether a PHY of the second node has been allocated for aggregation. Mishra merely teaches a register. Mishra does not teach the register for use for aggregation. Instead, Mishra's register is used in a master/slave relationship. Consequently, Mishra fails to disclose, teach or suggest every element recited in claim 1.

Kumar does not overcome the deficiencies of Mishra. Kumar arguably discloses a process for link aggregation. However, Applicant respectfully submits that they can find no mention in Kumar of using a specific register that can be remotely manipulated. Instead, the messages sent in the language cited by the Office Action are likely stored in the system memory, rather than a register, of the computing device used to perform the process of Kumar, such as is described at column 4, lines 23-37. Applicant respectfully submits that the use of a specific remotely manipulated remote discovery register is

distinct from the general practice of storing information at varying places in RAM. Consequently, Mishra and Kumar, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Chin does not overcome the deficiencies of Mishra and Kumar. Chin teaches a port aggregation protocol to dynamically aggregate redundant links between neighboring devices in a computer network. *See* Abstract. Applicant respectfully submits that Chin does not teach the use of a remotely manipulated remote discovery register. Consequently, Chin, Mishra and Kumar, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Palm does not overcome the deficiencies of Mishra, Kumar and Chin. Palm teaches a method for minimizing a retransmission of messages when an error message is received during a communication handshaking procedure. *See* Abstract. Applicant respectfully submits that Palm does not teach the use of a remotely manipulated remote discovery register. Consequently, the cited references, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, Applicant submits that even if the combination of the cited references were to teach or suggest every element of the claimed invention, without motivation to combine the cited references to arrive at the claimed invention, a rejection based on obviousness under 35 U.S.C. § 103(a) is improper. *See* MPEP § 2143.01, for example. The motivation to make the alleged combination must be found either in the cited references or in the knowledge generally available to a person of ordinary skill in the art. *Supra.* Possible sources for a motivation to combine references include: [use the appropriate argument unless all three apply] (1) the nature of the problem to be solved; (2) the teachings of the prior art, and (3) the knowledge of persons of ordinary skill in the art. The Office, however, cannot rely solely upon the level of skill in the art to provide the suggestion to make the alleged combination of cited references. *Supra.* Initially, the burden is on the Office to provide some suggestion that it is desirable to do what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the

claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *See* MPEP § 2142, for example.

Claim 1 also is patentable and non-obvious over Mishra in view of Kumar, Chin and Palm, whether taken alone or in combination, because a rejection based on obviousness under 35 U.S.C. § 103(a) is improper without a motivation to combine the cited references. *See* MPEP § 2142, for example. Mishra fails to discuss the use of the register in performing aggregation procedures. Therefore, Mishra clearly fails to provide the proper motivation to make the combination alleged by the Office.

Absence from the cited references of the above-mentioned claim elements negates obviousness. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claim 3, which depends from claim 1, and therefore contains additional features that further distinguish these claims from the cited references.

Independent claims 4, 6, 10, 13, 16, 18, 29, 32, and 38 recite elements similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 4, 6, 10, 13, 16, 18, 29, 32, and 38 are not obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 4, 6, 10, 13, 16, 18, 29, 32, and 38. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 7, 9, 11, 14, 19-28, 30-31, and 33-38 that depend from claims 6, 10, 13, 18, 29, 32, and 38, and therefore contain additional features that further distinguish these claims from the cited references.

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Examiner: Jeffrey M. Rutkowski
TC/A.U. 2473

CONCLUSION

It is believed that claims 1, 3, 4, 6, 7, 9-11, 13, 14, 16 and 18-38 are in condition for allowance. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the limitations of the independent claims and dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the claims from the cited references, taken alone or in combination, based on additional features contained in the independent or dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The Examiner is invited to contact the undersigned to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the Deposit Account No. 50-4238.

Respectfully submitted,

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Rebecca M. Bachner, Reg. No. 54,865
Under 37 CFR 1.34(a)

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